IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5230 of 1996
with
CROSS OBJECTION No 58 of 2001
with
CIVIL APPLICATION No 1317 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

DEVDASBHAI UKABHAI MALKANIYA

Appearance:

1. First Appeal No. 5230 of 1996
GOVERNMENT PLEADER for Petitioner No. 1-3
MR AJ PATEL for Respondent No. 1

2. CROSS OBJECTION No. 58 of 2001
GOVERNMENT PLEADER for Petitioner No. 1
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

The present first appeal is directed against the award made by the Reference Court in Land Acquisition Case No. 70/89 on the file of Assistant Judge, Amreli decided on 31.7.96.

Notification for acquisition of land for the purpose of construction of Rajula bypass road was issued under Sec. 4 of the Land Acquisition Act (hereinafter referred to as the Act) for the lands situated at Rajula admeasuring 5969 sq.mt. Notification under Sec. 6 of the Act was published on 14.11.87 and after following the procedure laid down under the Act, the Special Land Acquisition Officer made an award on 6.6.89 awarding compensation at the rate of Rs.4.50 ps. per sq.mtr. The offer being not acceptable to the claimant, reference was sought and ultimately Reference Court, though did not fully agree with the contention raised by the claimant that he is entitled to get Rs.160/- per sq.mtr., determined the market price at Rs.70/- per sq.mtr. in all and accordingly made the award. On behalf of the claimant, oral as well as documentary evidence has been placed before the Reference Court. It is pointed out that his non-agricultural land is adjacent to plot no. 18 bearing survey no. 230 and vide exh. 26 for land admeasuring 215.36 sq.mtr. Sale Deed was executed on 24.10.86 at the rate of Rs.44.50ps. per sq.mtr. Another sale instance on which reliance was placed for plot no. 17 situated in survey no. 230 admeasuring 217.17 sq.mtr. for which Sale Deed, exh. 27 was executed on 24.10.86 at the rate of Rs.43/- per sq.mtr. There is another sale instance of Plot no. 25 of survey no. 230 admeasuring 302.30 sq.mtr. for which Sale Deed, exh. 28 was executed at the rate of Rs.47.30 ps. For the aforesaid Sale instances, documents vide exh. 26,27 & 28 were produced on the record of the case. Other documents such as order declaring lands of the claimant being non-agricultural vide exh. 30, copy of stamp duty notice vide exh. 45, order in connection with the stamp duty made by appropriate authority vide exh. 47, copy of challan exh. 48 and copy of stamp duty case no. 921/92 vide exh. 49 to 51 and copy of order of stamp duty Case no. 922/92 vide exh. 52 to 54 were produced before the Reference Court.

What is contended before us is that the Sale Deed

ought to have been taken into consideration and relying on the price mentioned in the Sale Deed compensation should have been determined in considering the market value as contemplated under Sec. 23 of the Act. The Court has to examine as to what price will be paid by a genuine purchaser. If there is undervaluation by some other parties, it cannot be said that the price mentioned in such undervalued documents should be considered. Mr.Patel, learned counsel appearing for the claimant submitted that the Reference court has not awarded even the average price which, according to the Government, should have been mentioned in the Sale Deed exh. 26,27 & 28. According to him, exh. 26 was assessed by the Government @ Rs.100/- per sq.mtr., exh. 27 was also assessed @ Rs.100/- per sq.mtr. and exh. 28 was assessed @ Rs.175/per sq.mtr. These were plots of small size and not agricultural lands and even average would come to Rs.125/- and not Rs.45/per sq.mtr. as reflected in the Sale Deeds. He further submitted that if the Government on one hand is determining the market value for one purpose cannot adopt another formula for another purpose. He invited the attention of the Court to the decision rendered by the Division Bench of this Court in case of Dy.Collector Land Acquisition & Rehabilitation, Amreli & Anr. V/s Lalubhai Keshavbhai reported in 1999(3) G.L.R. 2625 wherein in para 13.18(k), it is pointed out as under:

" Secondly, it is a matter of common knowledge that the agreement to sale is generally arrived at much earlier as compared to the actual date of the execution and it has come on record in this case that there was an agreement to sell and as per that agreement the price fixed was Rs.300/per sq.mtr. but in order to save the stamp duty, the less amount was mentioned and for that purpose the notice under Sec. 32C had also been issued by the Collector, Stamp Duty. Such practices in the sale transactions of immovable property are not uncommon, but even if it is assumed that in a given case the price agreed in the agreement to sale was higher and in fact at the time of execution of the sale deed a lower rate was mentioned, it would reflect the practice to avoid the payment of stamp duty, but the same cannot impinge upon the actual market value. On the contrary, notices issued by the Collector, Stamp Duty shows that the price at which the sale deed was sought to be executed was not the real price and the actual price was much higher than the one mentioned in the sale deed. Thus, the two

reasons, as given out hereinabove, would make it clear that for a land admeasuring 1000sq.mtr. in the case of Exh. 72, Rs.18,500/- could not be real prevailing market rate."

He submitted that it is very clear that with a view to avoid the stamp duty, the price is shown if not much less certainly less at the time of execution of the documents but in fact price is much higher than indicated in the documents. He submitted that considering the reality, the Reference Court even did not accept the contention that considering the average of all the three transactions Rs.125/- per sq.mtr. should be awarded. He submitted that the Reference Court awarded @ Rs.70/- per sq.mtr. only. No doubt the price determined by the Dy.Collector, Stamp Duty cannot be the basis and relying on that evidence only, market price cannot be determined under the Act. In our opinion Court has rightly refused to accept the same as basis for determination.

It is required to be noted that on behalf of the State, the documents have been admitted. It is also admitted that the notices were issued by the Dy.Collector calling upon the authors of exh. 26,27 & 28 to pay the stamp duty at a higher rate than indicated in the documents itself. The orders are also placed on record vide exh. 52 to 54. However, as pointed out by the Division Bench in case of Lalubhai Keshavbhai (supra) notice issued by the Collector, Stamp Duty, real price was not shown. The practice of transaction being undervalued should not come in way of honest purchaser/seller. The Reference Court keeping this aspect in mind, seems to have determined the market value. Reference Court has not thought it fit to accept the valuation made by the Collector, Stamp Duty. Considering the realities has assessed the market price, certainly keeping aspects of undervaluation in mind. But at the same time has not accepted the sale price fixed by Collector, Stamp Duty and has made own assessment. The lands were non-agricultural lands and for that documents are also produced on the record, therefore obviously price would be higher. Considering all these aspects viz. date of Sale Deed and the issuance of notification under Sec. 4 of the Act, the Reference Court awarded Rs.70/- per sq.mtr. In view of what is stated hereinabove, it is not possible to agree with the contention raised by the learned A.G.P. that higher amount is awarded and there is no proper determination of market price. Mr.Patel, before effective hearing of his cross-objection, requested to withdraw his cross-objection. Permission granted. Consequently, the

State appeal stands dismissed. It appears that on 13.2.97 the Division Bench in C.A.No. 1317/97 made an order for depositing the amount. The State is direction to see that the remaining amount is deposited with all statutory benefits within a period of 3 months from today.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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